

2608

2009-2010 Regular Sessions

I N A S S E M B L Y

January 21, 2009

Introduced by M. of A. REILICH, CALHOUN, KOLB, TOWNSEND, TOBACCO --
Multi-Sponsored by -- M. of A. ALFANO, AMEDORE, BACALLES, BALL,
BURLING, CONTE, CROUCH, DUPREY, ERRIGO, FINCH, GIGLIO, HAWLEY, HAYES,
McDONOUGH, OAKS, O'MARA, SCOZZAFAVA -- read once and referred to the
Committee on Codes

AN ACT to amend the penal law, the election law, the education law and
the correction law, in relation to voting by level two or level three
sex offenders

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. The penal law is amended by adding two new sections 145.75
2 and 145.80 to read as follows:
3 S 145.75 UNLAWFULLY ENTERING OR REMAINING IN A SCHOOL OR FACILITY FOR
4 CHILDREN FOR THE PURPOSES OF VOTING IN THE SECOND DEGREE.
5 1. A PERSON IS GUILTY OF UNLAWFULLY ENTERING OR REMAINING IN A SCHOOL
6 OR FACILITY FOR CHILDREN FOR THE PURPOSES OF VOTING IN THE SECOND
7 DEGREE, WHEN BEING A LEVEL TWO OR LEVEL THREE SEX OFFENDER, HE OR SHE
8 ENTERS OR REMAINS IN A SCHOOL OR FACILITY FOR CHILDREN FOR THE PURPOSES
9 OF CASTING A BALLOT OR OTHERWISE VOTING DURING ANY PRIMARY, GENERAL,
10 SPECIAL, SCHOOL DISTRICT OR OTHER ELECTION IN WHICH RESIDENTS, REGIS-
11 TERED OR QUALIFIED VOTERS ARE ENTITLED TO CAST BALLOTS.
12 2. FOR THE PURPOSES OF THIS SECTION: (A) "LEVEL TWO OR LEVEL THREE SEX
13 OFFENDER" SHALL MEAN A PERSON REGISTERED OR REQUIRED TO REGISTER UNDER
14 SECTION ONE HUNDRED SIXTY-EIGHT-F OF THE CORRECTION LAW WHO HAS RECEIVED
15 A LEVEL TWO OR LEVEL THREE DESIGNATION PURSUANT TO SECTION ONE HUNDRED
16 SIXTY-EIGHT-L OF THE CORRECTION LAW; AND (B) "SCHOOL OR FACILITY FOR
17 CHILDREN" SHALL MEAN A BUILDING, STRUCTURE, ATHLETIC PLAYING FIELD,
18 PLAYGROUND OR LAND CONTAINED WITHIN THE REAL PROPERTY BOUNDARY LINE OF A
19 PUBLIC OR PRIVATE ELEMENTARY, PAROCHIAL, INTERMEDIATE, JUNIOR HIGH,
20 VOCATIONAL, OR HIGH SCHOOL, OR ANY OTHER FACILITY OR INSTITUTION PRIMA-

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD04410-01-9

RILY USED FOR THE CARE OR TREATMENT OF PERSONS UNDER THE AGE OF EIGHTEEN WHILE ONE OR MORE OF SUCH PERSONS UNDER THE AGE OF EIGHTEEN ARE PRESENT. UNLAWFULLY ENTERING OR REMAINING IN A SCHOOL OR FACILITY FOR CHILDREN FOR THE PURPOSES OF VOTING IN THE SECOND DEGREE IS A CLASS A MISDEMEANOR.

S 145.80 UNLAWFULLY ENTERING OR REMAINING IN A SCHOOL OR FACILITY FOR CHILDREN FOR THE PURPOSES OF VOTING IN THE FIRST DEGREE.

A PERSON IS GUILTY OF UNLAWFULLY ENTERING OR REMAINING IN A SCHOOL OR FACILITY FOR CHILDREN FOR THE PURPOSES OF VOTING IN THE FIRST DEGREE WHEN HE OR SHE COMMITS THE CRIME OF UNLAWFULLY ENTERING OR REMAINING IN A SCHOOL OR FACILITY FOR CHILDREN FOR THE PURPOSES OF VOTING IN THE SECOND DEGREE, HAVING PREVIOUSLY BEEN CONVICTED OF SUCH CRIME WITHIN THE PRECEDING TEN YEARS.

UNLAWFULLY ENTERING OR REMAINING IN A SCHOOL OR FACILITY FOR CHILDREN FOR THE PURPOSES OF VOTING IN THE FIRST DEGREE IS A CLASS E FELONY.

S 2. Paragraph (f) of subdivision 1 of section 8-400 of the election law is amended and a new paragraph (g) is added to read as follows:

(f) absent from his voting residence because he is detained in jail awaiting action by a grand jury or awaiting trial, or confined in prison after a conviction for an offense other than a felony, provided that he is qualified to vote in the election district of his residence[.]; OR

(G) PROHIBITED FROM APPEARING PERSONALLY AT THE POLLING PLACE OF THE ELECTION DISTRICT IN WHICH HE OR SHE IS A QUALIFIED VOTER BECAUSE HE OR SHE IS A LEVEL TWO OR LEVEL THREE SEX OFFENDER AND SUCH POLLING PLACE IS LOCATED ON OR WITHIN A SCHOOL OR FACILITY FOR CHILDREN AS THE TERMS "LEVEL TWO AND LEVEL THREE SEX OFFENDER" AND "SCHOOL OR FACILITY FOR CHILDREN" ARE DEFINED IN SECTION 145.75 OF THE PENAL LAW.

S 3. Subparagraph (vi) of paragraph (c) of subdivision 3 of section 8-400 of the election law is amended and a new subparagraph (vii) is added to read as follows:

(vi) absent from the county of his residence, or if a resident of the city of New York absent from said city, because of his accompanying his spouse, parent or child who falls within one of the foregoing categories; a statement that the applicant resides in the same election district as such spouse, parent or child, the name and address of such spouse, parent or child, and, unless the application accompanies the application of such spouse, parent or child, the information as to the status of such spouse, parent or child required by the applicable category[.]; OR

(VII) PROHIBITED FROM APPEARING PERSONALLY AT THE POLLING PLACE OF THE ELECTION DISTRICT IN WHICH HE OR SHE IS A QUALIFIED VOTER BECAUSE HE OR SHE IS A LEVEL TWO OR LEVEL THREE SEX OFFENDER AND SUCH POLLING PLACE IS LOCATED ON OR WITHIN A SCHOOL OR FACILITY FOR CHILDREN AS THE TERMS "LEVEL TWO AND LEVEL THREE SEX OFFENDER" AND "SCHOOL OR FACILITY FOR CHILDREN" ARE DEFINED IN SECTION 145.75 OF THE PENAL LAW.

S 4. Section 8-400 of the election law is amended by adding a new subdivision 10 to read as follows:

10. SIXTY DAYS BEFORE EACH ELECTION THE BOARD OF ELECTIONS SHALL COMPILE A LIST OF ALL LEVEL TWO AND LEVEL THREE REGISTERED SEX OFFENDERS ENTITLED TO RECEIVE ABSENTEE BALLOTS PURSUANT TO THE PROVISIONS OF THIS SECTION. THE BOARD OF ELECTIONS SHALL, BY MAIL ADDRESSED TO SUCH SEX OFFENDER AT HIS OR HER REGISTERED ADDRESS, SEND AN ABSENTEE BALLOT FOR THE ENSUING ELECTION TO SUCH PERSON IN THE SAME MANNER AS PROVIDED IN THIS SECTION FOR A QUALIFIED VOTER ENTITLED TO AN ABSENTEE BALLOT BECAUSE OF ILLNESS OR DISABILITY.

1 S 5. Subdivision 2 of section 2018-a of the education law, as added by
2 chapter 219 of the laws of 1978, paragraphs a and b as amended by chap-
3 ter 136 of the laws of 1991, paragraph c as amended by chapter 26 of the
4 laws of 1994, paragraph d as amended by chapter 72 of the laws of 1988
5 and paragraph g as amended by chapter 825 of the laws of 1984, is
6 amended to read as follows:

7 2. a. An applicant for such an absentee ballot shall submit an appli-
8 cation setting forth (1) his OR HER name and residence address, includ-
9 ing the street and number, if any, or town and rural delivery route, if
10 any; (2) that he OR SHE is or will be, on the day of the school district
11 election, a qualified voter of the school district in which he OR SHE
12 resides in that he OR SHE is or will be, on such date, over eighteen
13 years of age, a citizen of the United States and has or will have
14 resided in the district for thirty days next preceding such date; (3)
15 whether he OR SHE is registered in the district; AND (4) that he OR SHE
16 will be unable to appear to vote in person on the day of the school
17 district election for which the absentee ballot is requested because he
18 OR SHE is, or will be on such day (a) a patient in a hospital, or unable
19 to appear personally at the polling place on such day because of illness
20 or physical disability [or]; (b) because his OR HER duties, occupation,
21 business, or studies will require him OR HER to be outside of the county
22 or city of his residence on such day[,]; (c) because he OR SHE will be
23 on vacation outside the county or city of his OR HER residence on such
24 day; [or,] (d) absent from his voting residence because he OR SHE is
25 detained in jail awaiting action by a grand jury or awaiting trial or is
26 confined in prison after conviction for an offense other than a felony.
27 Such application must be received by the district clerk at least seven
28 days before the election if the ballot is to be mailed to the voter, or
29 the day before the election, if the ballot is to be delivered personally
30 to the voter; OR (E) PROHIBITED FROM APPEARING PERSONALLY AT THE POLLING
31 PLACE OF THE ELECTION DISTRICT IN WHICH HE OR SHE IS A QUALIFIED VOTER
32 BECAUSE HE OR SHE IS A LEVEL TWO OR LEVEL THREE SEX OFFENDER AND SUCH
33 POLLING PLACE IS LOCATED ON OR WITHIN A SCHOOL OR FACILITY FOR CHILDREN
34 AS THE TERMS "LEVEL TWO AND LEVEL THREE SEX OFFENDER" AND "SCHOOL OR
35 FACILITY FOR CHILDREN" ARE DEFINED IN SECTION 145.75 OF THE PENAL LAW.

36 b. (1) Where such duties, occupation, business, or studies are of such
37 a nature as ordinarily to require such absence, a brief description of
38 such duties, occupation, business, or studies shall be set forth in such
39 application. (2) Where such duties, occupation, business, or studies are
40 not of such a nature as ordinarily to require such absence, such appli-
41 cation shall contain a statement of the special circumstances on account
42 of which such absence is required.

43 c. Where the applicant expects in good faith to be absent on the day
44 of the election because he OR SHE will be on vacation elsewhere on such
45 day, such application shall also contain the dates upon which he OR SHE
46 expects to begin and end such vacation, the place or places where he OR
47 SHE expects to be on such vacation, the name and address of his OR HER
48 employer, if any, and if self-employed or retired, a statement to that
49 effect.

50 d. Where the absence is because of detention or confinement to jail,
51 such application shall state whether the voter is detained awaiting
52 action of the grand jury or is confined after conviction for an offense
53 other than a felony.

54 e. WHERE THE APPLICANT INDICATES HE OR SHE IS PROHIBITED FROM APPEAR-
55 ING PERSONALLY AT THE POLLING PLACE OF THE ELECTION DISTRICT IN WHICH HE
56 OR SHE IS A QUALIFIED VOTER BECAUSE HE OR SHE IS A LEVEL TWO OR LEVEL

THREE SEX OFFENDER AND SUCH POLLING PLACE IS LOCATED ON OR WITHIN A SCHOOL OR FACILITY FOR CHILDREN AS THE TERMS "LEVEL TWO AND LEVEL THREE SEX OFFENDER" AND "SCHOOL OR FACILITY FOR CHILDREN" ARE DEFINED IN SECTION 145.75 OF THE PENAL LAW SUCH APPLICATION SHALL STATE WHETHER OR NOT THE VOTER IS CURRENTLY UNDER A SENTENCE OF IMPRISONMENT FOR A FELONY OR ON PAROLE.

F. Where a person is or would be, if he OR SHE were a qualified voter, entitled to apply for the right to vote by absentee ballot under the provisions of this section, his OR HER spouse, parent or child, if a qualified voter and a resident of the same school district, shall be entitled to vote as an absentee voter upon personally making and signing an application in accordance with the preceding provisions of this subdivision and showing that he OR SHE expects to be absent from the school district on the day of the school district election by reason of accompanying or being with the spouse, child or parent who is or would be, if he OR SHE were a qualified voter, so entitled to apply for the right to vote by absentee ballot, and, in the event no application is made by such spouse, child or parent, such further information as the board of registration shall require.

[f.] G. Such application shall include the following statement to be signed by the voter.

I hereby declare that the foregoing is a true statement to the best of my knowledge and belief, and I understand that if I make any material false statement in the foregoing statement of application for absentee ballots, I shall be guilty of a misdemeanor.

Date.....Signature of Voter

[g.] H. An applicant whose ability to appear personally at the polling place of the school district of which he OR SHE is a qualified voter is substantially impaired by reason of permanent illness or physical disability and whose registration record has been marked "permanently disabled" by the board of elections pursuant to the provisions of the election law shall be entitled to receive an absentee ballot pursuant to the provisions of this section without making separate application for such absentee ballot, and the board of registration upon being advised by the board of elections on or with the list of registered voters that the registration record of a voter is marked "permanently disabled" shall send an absentee ballot to such voter at his OR HER last known address with a request to the postal authorities not to forward same but to return same in five days in the event that it cannot be delivered to the addressee. The board of education shall determine whether such ballot shall be sent by first class or by certified mail. All such ballots shall be mailed in the same manner as determined by the board of education. The board of registration shall make an appropriate entry on the registration indicating the fact that an absentee ballot has been sent and the date of mailing.

S 6. Subdivision 2 of section 2018-b of the education law, as amended by chapter 46 of the laws of 1992 and paragraph c as amended by chapter 26 of the laws of 1994, is amended to read as follows:

2. a. An applicant for such an absentee ballot shall submit an application setting forth (1) his OR HER name and residence address, including the street and number, if any, or town and rural delivery route, if any; (2) that he OR SHE is or will be, on the day of the school district election, a qualified voter of the school district in which he OR SHE resides in that he OR SHE is or will be, on such date, over eighteen

1 years of age, a citizen of the United States and has or will have
2 resided in the district for thirty days next preceding such date; AND
3 (3) that he OR SHE will be unable to appear to vote in person on the day
4 of the school district election for which the absentee ballot is
5 requested because he OR SHE is, or will be on such day (a) a patient in
6 a hospital, or unable to appear personally at the polling place on such
7 day because of illness or physical disability [or]; (b) because his OR
8 HER duties, occupation, business, or studies will require him OR HER to
9 be outside of the county or city of his residence on such day[,]; (c)
10 because he OR SHE will be on vacation outside the county or city of his
11 OR HER residence on such day; [or,] (d) absent from his OR HER voting
12 residence because he OR SHE is detained in jail awaiting action by a
13 grand jury or awaiting trial or is confined in prison after conviction
14 for an offense other than a felony; OR (E) PROHIBITED FROM APPEARING
15 PERSONALLY AT THE POLLING PLACE OF THE ELECTION DISTRICT IN WHICH HE OR
16 SHE IS A QUALIFIED VOTER BECAUSE HE OR SHE IS A LEVEL TWO OR LEVEL THREE
17 SEX OFFENDER AND SUCH POLLING PLACE IS LOCATED ON OR WITHIN A SCHOOL OR
18 FACILITY FOR CHILDREN AS THE TERMS "LEVEL TWO AND LEVEL THREE SEX OFFEN-
19 DER" AND "SCHOOL OR FACILITY FOR CHILDREN" ARE DEFINED IN SECTION 145.75
20 OF THE PENAL LAW. Such application must be received by the district
21 clerk or designee of the trustees or school board at least seven days
22 before the election if the ballot is to be mailed to the voter, or the
23 day before the election, if the ballot is to be delivered personally to
24 the voter.

25 b. (1) Where such duties, occupation, business, or studies are of such
26 a nature as ordinarily to require such absence, a brief description of
27 such duties, occupation, business, or studies shall be set forth in such
28 application.

29 (2) Where such duties, occupation, business, or studies are not of
30 such a nature as ordinarily to require such absence, such application
31 shall contain a statement of the special circumstances on account of
32 which such absence is required.

33 c. Where the applicant expects in good faith to be absent on the day
34 of the election because he OR SHE will be on vacation elsewhere on such
35 day, such application shall also contain the dates upon which he OR SHE
36 expects to begin and end such vacation, the place or places where he OR
37 SHE expects to be on such vacation, the name and address of his OR HER
38 employer, if any, and if self-employed or retired, a statement to that
39 effect.

40 d. Where the absence is because of detention or confinement to jail,
41 such application shall state whether the voter is detained awaiting
42 action of the grand jury or is confined after conviction for an offense
43 other than a felony.

44 e. WHERE THE APPLICANT INDICATES THAT HE OR SHE IS PROHIBITED FROM
45 APPEARING PERSONALLY AT THE POLLING PLACE OF THE ELECTION DISTRICT IN
46 WHICH HE OR SHE IS A QUALIFIED VOTER BECAUSE HE OR SHE IS A LEVEL TWO OR
47 LEVEL THREE SEX OFFENDER AND SUCH POLLING PLACE IS LOCATED ON OR WITHIN
48 A SCHOOL OR FACILITY FOR CHILDREN AS THE TERMS "LEVEL TWO AND LEVEL
49 THREE SEX OFFENDER" AND "SCHOOL OR FACILITY FOR CHILDREN" ARE DEFINED IN
50 SECTION 145.75 OF THE PENAL LAW SUCH APPLICATION SHALL STATE WHETHER OR
51 NOT THE VOTER IS CURRENTLY UNDER A SENTENCE OF IMPRISONMENT FOR A FELONY
52 OR ON PAROLE.

53 F. Where a person is or would be, if he OR SHE were a qualified voter,
54 entitled to apply for the right to vote by absentee ballot under the
55 provisions of this section, his OR HER spouse, parent or child, if a
56 qualified voter and a resident of the same school district, shall be

1 entitled to vote as an absentee voter upon personally making and signing
2 an application in accordance with the preceding provisions of this
3 subdivision and showing that he OR SHE expects to be absent from the
4 school district on the day of the school district election by reason of
5 accompanying or being with the spouse, child or parent who is or would
6 be, if he OR SHE were a qualified voter, so entitled to apply for the
7 right to vote by absentee ballot, and, in the event no application is
8 made by such spouse, child or parent, such further information as the
9 clerk of the school district or designee of the trustees or school board
10 shall require.

11 [f.] G. Such application shall include the following statement to be
12 signed by the voter.

13 I hereby declare that the foregoing is a true statement to the best of
14 my knowledge and belief, and I understand that if I make any material
15 false statement in the foregoing statement of application for absentee
16 ballots, I shall be guilty of a misdemeanor.

17 Date.....Signature of Voter

18 [g.] H. The clerk of the school district or a designee of the trustees
19 or school board shall request registration lists from the board of
20 elections pursuant to subdivision three of section 5-612 of the election
21 law for those voters whose registration record has been marked "perma-
22 nently disabled". An applicant whose ability to appear personally at the
23 polling place of the school district of which he OR SHE is a qualified
24 voter is substantially impaired by reason of permanent illness or phys-
25 ical disability and whose registration record has been marked "perma-
26 nently disabled" as determined by the board of elections pursuant to the
27 provisions of this chapter and who has previously applied for an absen-
28 tee ballot shall be entitled to receive subsequent absentee ballots
29 pursuant to the provisions of this section without making separate
30 application for such absentee ballot, and the clerk of the school
31 district or a designee of the trustees or school board shall send an
32 absentee ballot to such voter at his OR HER last known address with a
33 request to the postal authorities not to forward same but to return same
34 in five days in the event that it cannot be delivered to the addressee.
35 The clerk of the school district or a designee of the trustees or school
36 board shall determine whether such ballot shall be sent by first class
37 or by certified mail. All such ballots shall be mailed in the same
38 manner as determined by the trustees or the board of education.

39 S 7. Subdivision 1 of section 168-q of the correction law, as amended
40 by chapter 106 of the laws of 2006, is amended to read as follows:

41 1. The division shall maintain a subdirectory of level two and three
42 sex offenders. The subdirectory shall include the exact address, address
43 of the offender's place of employment and photograph of the sex offender
44 along with the following information, if available: name, physical
45 description, age and distinctive markings. Background information
46 including the sex offender's crime of conviction, modus of operation,
47 type of victim targeted, the name and address of any institution of
48 higher education at which the sex offender is enrolled, attends, is
49 employed or resides and a description of special conditions imposed on
50 the sex offender shall also be included. The subdirectory shall have sex
51 offender listings categorized by county and zip code. A copy of the
52 subdirectory shall annually be distributed to the offices of local
53 village, town, city, county or state law enforcement agencies for

1 purposes of public access AND TO EACH COUNTY BOARD OF ELECTIONS AND THE
2 BOARD OF ELECTIONS OF THE CITY OF NEW YORK. The division shall distrib-
3 ute monthly updates to the offices of local village, town, city, county
4 or state law enforcement agencies for purposes of public access. Such
5 departments shall require that a person in writing provide their name
6 and address prior to viewing the subdirectory. Any information identify-
7 ing the victim by name, birth date, address or relation to the sex
8 offender shall be excluded from the subdirectory distributed for
9 purposes of public access. The subdirectory provided for herein shall be
10 updated monthly to maintain its efficiency and usefulness and shall be
11 computer accessible. Such subdirectory shall be made available at all
12 times on the internet via the division homepage.

13 S 8. The election law is amended by adding a new section 17-172 to
14 read as follows:

15 S 17-172. IMMUNITY AND DEFENSE FOR POLL WORKERS AND OTHERS RELATED TO
16 ADMITTANCE OF SEX OFFENDERS TO POLLING PLACES. 1. NO PERSON SHALL BE
17 CIVILLY LIABLE FOR REFUSING ADMITTANCE OF A LEVEL TWO OR LEVEL THREE SEX
18 OFFENDER TO A POLLING PLACE WHICH IS OR IS WITHIN A SCHOOL OR FACILITY
19 FOR CHILDREN AS THOSE TERMS ARE DEFINED IN SECTION 145.75 OF THE PENAL
20 LAW, WHEN SUCH PERSON IS ACTING IN GOOD FAITH AND IN THE PERFORMANCE OF
21 THEIR DUTIES. FOR THE PURPOSES OF THIS SECTION, A PERSON SHALL BE DEEMED
22 TO BE ACTING IN GOOD FAITH IF THE NAME AND ADDRESS OR NAME AND APPROXI-
23 MATE ADDRESS BASED ON ZIP CODE OF THE VOTER REFUSED ADMISSION APPEARS ON
24 A LIST OF LEVEL TWO OR LEVEL THREE SEX OFFENDERS PROVIDED BY A BOARD OF
25 ELECTIONS OR THE DIVISION OF CRIMINAL JUSTICE SERVICES.

26 2. IT SHALL BE AN AFFIRMATIVE DEFENSE TO ANY CHARGE OF VIOLATING THE
27 ELECTIVE FRANCHISE OF A VOTER BASED UPON THE REFUSING OF ADMITTANCE OF A
28 LEVEL TWO OR LEVEL THREE SEX OFFENDER TO A POLLING PLACE WHICH IS OR IS
29 WITHIN A SCHOOL OR FACILITY FOR CHILDREN AS THOSE TERMS ARE DEFINED IN
30 SECTION 145.75 OF THE PENAL LAW, THAT THE NAME AND ADDRESS OR NAME AND
31 APPROXIMATE ADDRESS BASED ON ZIP CODE OF THE VOTER REFUSED ADMISSION
32 APPEARS ON A LIST OF LEVEL TWO OR LEVEL THREE SEX OFFENDERS PROVIDED BY
33 A BOARD OF ELECTIONS OR THE DIVISION OF CRIMINAL JUSTICE SERVICES.

34 S 9. This act shall take effect immediately and shall apply to
35 elections held on and after January 1, 2010, provided that the state
36 board of elections shall be authorized to promulgate any rules, regu-
37 lations, forms, or notices required to carry out the provisions of this
38 act prior to such effective date.